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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO DIVISION**

22 UNWIRED PLANET LLC, a Nevada
limited liability company.

Case No. 3:12-cv-0504-JRH-VPC

Plaintiff.

V.

25 GOOGLE INC., a Delaware
26 corporation.

UNWIRED PLANET'S OPPOSITION TO GOOGLE'S MOTION TO TRANSFER

Defendant

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1 **I. INTRODUCTION**

2 It's no secret that Nevada has made a substantial effort to make itself attractive to
 3 California businesses. Yowell Decl. ¶ 16, Ex. 67. Nevada has no corporate income tax, no
 4 personal income tax and no inventory tax. In addition, it has relatively lower workers'
 5 compensation rates and a pro-business attitude. These efforts have succeeded in attracting
 6 companies like Unwired Planet, a publicly-traded company which has planted its roots in Reno,
 7 Nevada and is here to stay. Robbins Decl. ¶ 18. Unwired Planet's key witnesses and documents
 8 are located in this District and its core business operations – patent prosecution and licensing –
 9 take place here. Unwired Planet is entitled under the law of the Ninth Circuit and the District of
 10 Nevada to try its patent infringement claims against Google in its home District.

11 Google cannot meet its burden to show that the Northern District of California is *clearly*
 12 more convenient than Nevada. Google's witnesses and counsel (to the extent they reside in the
 13 Bay Area) can easily manage a 200 mile drive up Highway 80 or a 45 minute flight to Reno to
 14 present its defenses in this case. While Google tries to paint this action as a Silicon Valley
 15 dispute that is not convenient for any party, neither point is true. Considering all relevant
 16 factors, Google's Motion to Transfer should be denied.

17 **II. FACTUAL BACKGROUND**

18 Google correctly summarizes the patent infringement issues but misstates the facts
 19 concerning Unwired Planet's history and presence in Reno, Nevada as well as Google's own
 20 Nevada presence. Doc. # 33 at 2-4. The relevant and accurate facts are set forth below.

21 **A. History of Unwired Planet**

22 Unwired Planet, Inc. is the founder of the mobile internet.¹ In 1996, it launched the
 23 world's first end-to-end mobile internet browser, forming the foundation for the current
 24 smartphone revolution. Mulica Decl. ¶ 3. This product was a great success, and fueled
 25

26 ¹ Unwired Planet, Inc. and its predecessors have gone by a number of names, accurately set out
 27 in Google's Motion. Doc. # 33 at 3. The Plaintiff in this case, Unwired Planet LLC, is a Nevada
 28 LLC wholly-owned by Unwired Planet, Inc. All patents-in-suit are currently owned by Unwired
 Planet LLC. For convenience, Plaintiff Unwired Planet LLC, the current Unwired Planet, Inc.,
 and all of these predecessors are referred to as simply "Unwired Planet."

1 expansions and acquisitions that included the addition of e-mail and multimedia messaging
 2 products. Mulica Decl. ¶¶ 3-4. At one point, Unwired Planet's products constituted nearly half
 3 of the global mobile internet browser market. Mulica Decl. ¶ 3. Unwired Planet's vast patent
 4 portfolio, a small portion of which is at issue in this action, speaks to the volume of innovative
 5 technology that it developed throughout its existence. Robbins Decl. ¶ 6.

6 Gradual market pressure from infringing competitors such as Google, Apple, and RIM
 7 irreparably harmed Unwired Planet's revenues and eroded its profits. Mulica Decl. ¶ 5.
 8 Eventually, in May 2012, Unwired Planet announced that all of its product divisions and the bulk
 9 of its employees would be transferred and spun-off as three new entities: Openwave Mobility,
 10 Openwave Messaging and the location business, all of which were sold. Robbins Decl. ¶ 5. The
 11 location business became a subsidiary of a company called PSL and Openwave Mobility and
 12 Openwave Messaging were sold to a firm called Marlin Equity Partners. *Id.* The surviving
 13 Unwired Planet retained the company's substantial patent portfolio for the sole purpose of
 14 licensing its ground-breaking inventions to the infringing companies that now dominate the
 15 marketplace. Robbins Decl. ¶ 6. As part of the sell-off of its product divisions, Unwired Planet
 16 was required to keep a variety of personnel temporarily employed in California for several
 17 months to provide support services during the transition to Reno. Robbins Decl. ¶ 7.

18 B. Unwired Planet Begins Operations In Reno's Business Friendly Climate

19 At the time Unwired Planet was split into four companies it had over 400 employees.
 20 Robbins Decl. ¶ 5. The company was operating out of its two-building, several thousand
 21 employee capacity San Francisco bay-front headquarters located in Redwood Shores, California,
 22 and its monthly rent payment was approximately \$2 million. Robbins Decl. ¶ 8. The location of
 23 the predecessor Unwired Planet (and its accompanying expense) did not fit with the drastic
 24 change in size and business plan of the new Unwired Planet, and so the process of finding a new
 25 home – one without Silicon Valley rent, taxes, and cost-of-living expenses – began immediately.
 26 Robbins Decl. ¶ 9.

27 Two key Unwired Planet employees, Daniel Mendez and Timothy Robbins, were
 28 appointed co-General Managers and chosen to lead Unwired Planet's rebirth and relocation.

1 Robbins Decl. ¶ 8. They quickly identified a number of cities as potential candidates, including
 2 Reno. Robbins Decl. ¶ 10. Several new employees needed to be hired, so a labor pool familiar
 3 with the maintenance and enforcement of intellectual property was preferred. *Id.* Reno, with its
 4 strong base of patent-centric gaming manufacturers fit the bill. Robbins Decl. ¶¶ 11-16. And,
 5 with its low rent, minimal taxes and economical cost of living, Reno was the clear business
 6 choice. In September, 2012, the decision was officially made – Unwired Planet would take
 7 advantage of Reno's pro-business environment. *Id.* ¶ 18.

8 No big change happens overnight, especially in a publicly-traded company such as
 9 Unwired Planet. All of the details – signing new leases, ending old ones, hiring new employees,
 10 separating with old ones, moving files and equipment, and formally obtaining board of director
 11 approval for all of the preceding – took time. Robbins Decl. ¶ 18. However, within a relatively
 12 short time, Unwired Planet acquired two temporary office locations, started renovations on its
 13 new Reno headquarters, began the search for Reno employees, and created a Nevada LLC to
 14 hold key patents and receive the income generated from them. Robbins Decl. ¶ 13. Mr. Mendez
 15 and Mr. Robbins, both formerly California-based, began working almost exclusively out of
 16 Unwired Planet's Reno offices, except when traveling to meet with out-of-state corporate
 17 representatives. Mendez Decl. ¶¶ 3-6; Robbins Decl. ¶¶ 3-4.

18 Before a final location had been chosen, Unwired Planet already knew it would have to
 19 sue Google and Apple to answer their extensive infringement, and had prepared to do so.
 20 Unwired Planet did not want their move to artificially delay their enforcement efforts, and
 21 therefore filed this action and another against Apple, Inc., a few days later. Robbins Decl. ¶ 19.

22 C. Unwired Planet's Growth In Reno

23 On January 10, 2013, Unwired Planet announced a transaction under which Ericsson, a
 24 pioneer of and one of the largest patent holders in mobile telephony, will transfer 2,185 issued
 25 and pending United States and international patents and applications to Unwired Planet. Robbins
 26 Decl. ¶¶ 13-14. These patents will complement Unwired Planet's existing portfolio of several
 27 hundred mobile internet and communication patents. This transaction makes Unwired Planet
 28 one of the largest patent holders in the mobile broadband space. Vetter Decl. ¶ 5. This

1 transaction was formally presented to Unwired Planet's board of directors at a meeting
 2 conducted in Reno in November 2012 at the company's then temporary space and formally
 3 approved in early January. Robbins Decl. ¶ 21.

4 Unwired Planet will manage its extensive portfolio out of its offices in Reno. This will
 5 require Unwired Planet to undertake significant hiring for its Reno headquarters. Vetter Decl. ¶
 6 5. The new hires will need to handle all aspects of managing a large patent portfolio, such as
 7 managing the docket of applications, hiring and managing patent prosecution counsel across the
 8 world, coordinating patent filings in multiple countries, filing new related applications, and
 9 paying maintenance fees. Unwired Planet will also negotiate and draft its license agreements
 10 from its Reno headquarters, which will also require substantial staffing. *Id.* To meet its needs,
 11 even before the Ericsson transaction, over the past several months, Unwired Planet hired several
 12 new employees from Reno. Robbins Decl. ¶ 20. Another employee, Dave Bushee, relocated
 13 from California and now permanently resides in Reno. *Id.* All told, Unwired Planet now has ten
 14 full time employees in Reno. Vetter Decl. ¶ 4. This headcount will clearly be insufficient given
 15 the size of Unwired Planet's current patent holdings, and Unwired Planet intends to aggressively
 16 hire additional employees with technical and patent backgrounds over the next several quarters.
 17 Vetter Decl. ¶ 5.

18 One recently-hired full time employee is Unwired Planet's Chief Financial Officer and
 19 Chief Administrative Officer, Eric Vetter, a long time Reno resident and a Nevada native. Vetter
 20 Decl. ¶¶ 2-3. In most small companies, and especially intellectual property companies, the CFO
 21 is the "heartbeat" of the company. Vetter Decl. ¶ 6. Unwired Planet is no different and Mr.
 22 Vetter runs Unwired Planet day-to-day from his office in Unwired Planet's Reno headquarters.
 23 Vetter Decl. ¶ 6.

24 The build out of Unwired Planet's permanent headquarters at 170 South Virginia Street
 25 was recently completed and a ribbon cutting ceremony was conducted on January 24, 2013.
 26 Robbins Decl. ¶ 24. Around this same time, Unwired Planet had its quarterly board of directors
 27 meeting at its new Reno headquarters, with everyone in attendance in person except for one
 28 board member. *Id.* Unwired Planet's public accountants were also in Reno during January to

1 close Unwired Planet's books for the last quarter. In total, approximately twenty individuals
 2 were conducting Unwired Planet business in its South Virginia headquarters in January. *Id.*

3 As of the filing of this opposition, Unwired Planet's move to Reno has created seven
 4 new, permanent, full-time jobs for Reno citizens, representing 70% of the total company's
 5 employees. Vetter Decl. ¶ 4. In addition, Unwired Planet intends to hire additional Reno
 6 personnel up to a full operating strength of 20 employees. Vetter Decl. ¶ 5. While some key
 7 personnel must travel frequently, as is the nature of the intellectual property business, Unwired
 8 Planet is operated from Reno on a day-to-day basis. Vetter Decl. ¶ 6. Board meetings, strategy
 9 discussions, meetings with potential strategic partners, licensing negotiations – it's all being done
 10 in Reno. Vetter Decl. ¶ 7. Simply put, Unwired Planet's licensing and enforcement business is
 11 conducted in Reno because Unwired Planet is a Reno business.

12 D. Google's Global and Nevada Presences

13 Google is a \$50 billion "global" company whose accused products and software
 14 applications are sold in this District and throughout the world. Yowell Decl. ¶ 5, Ex. 56 at 3.
 15 Google's software applications are used daily in this District. *Id.* Google claims that every
 16 accused product was developed, marketed, and sold by teams "led" by personnel in Mountain
 17 View (Doc. # 33-1 ¶¶ 5-8), but nearly two-thirds of Google employees work out of Google's
 18 many research, development, and sales offices throughout the world. Doc. # 33-1 ¶¶ 6, 9;
 19 Yowell Decl. ¶ 6, Ex. 57.

20 Moreover, Google has more ties to this forum than it acknowledges. For example,
 21 Nevada was the first state in the nation to pass legislation allowing electronically controlled self-
 22 driving ("driverless") cars. Yowell Decl. ¶¶ 7, 10, Exs. 58, 61. The lobbying force behind that
 23 groundbreaking Nevada legislation was Google. Yowell Decl. ¶¶ 8, 9, Exs. 59, 60. Google has
 24 continued to extensively test its driverless car fleet on Nevada roads. Yowell Decl. ¶¶ 12, 14,
 25 Exs. 63, 65. These are relevant infringing actions, as some of the key technologies that allow
 26 these driverless cars to function are accused products in this case, such as Google Maps and
 27 Navigation. Yowell Decl. ¶¶ 11, 13, Exs. 62, 64. In the words of one article, "[Google] knew
 28 what they were doing by moving forward in Nevada." Yowell Decl. ¶ 14, Ex. 65.

1 Additionally, Google and its products are regular stars at one of the world's largest
 2 technology trade shows, the Consumer Electronics Show ("CES") held in Las Vegas every
 3 January. For example, many Android smartphones, which utilize a number of accused products
 4 in this case, are shown at CES. Yowell Decl. ¶ 15, Ex. 66. If Nevada is an appropriate forum to
 5 test, market, and announce Google's products, then Nevada is an appropriate forum to determine
 6 whether those products are infringing Unwired Planets' patents-in-suit. In short, Google has a
 7 substantial infringing presence in Nevada.

8 **III. ARGUMENT**

9 A. Legal Standards

10 Google has accurately set forth the general factors governing a motion to transfer in the
 11 Ninth Circuit and this District. Doc. # 33 at 6-7. Some of the more intricate legal standards
 12 relevant to each of these factors and Google's Motion, however, have been mischaracterized by
 13 Google, and in those cases, Unwired Planet will address those legal standards within the context
 14 of analyzing each individual factor.

15 B. Whether the action could have been brought in the Northern District of California

16 Although no legal impediment would have existed to prevent Unwired Planet from
 17 bringing this lawsuit in the Northern District of California, the same could be said about any
 18 other District in the country. However, bringing this case in any other District would have
 19 required Unwired Planet to file outside of its home District. Doc. # 33 at 7. Google has not
 20 disputed that it is subject to personal jurisdiction in Nevada. Thus, Nevada is also an appropriate
 21 forum in which to bring this action. *See* 28 U.S.C. §§ 1332(c)(2), (d), 1400(b) (an action for
 22 patent infringement may be brought in any judicial district where the defendant is subject to
 23 personal jurisdiction).

24 C. Google has not shown the Northern District of California is a clearly more
 25 convenient forum than the District of Nevada

26 It is Google's burden to establish that transfer is *clearly* warranted because the balance of
 27 convenience tips *strongly* in favor of Google. *Securities Investor Protection Corp. v. Vigman*,
 28 764 F.2d 1309, 1317 (9th Cir. 1985). A motion to transfer does not require the court to find the

1 optimal forum, only to determine if the movant has shown the transferee forum is clearly more
 2 convenient for all parties. *Decker Coal v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th
 3 Cir. 1986). “Unless the balance of convenience is strongly in favor of the defendant, plaintiff’s
 4 choice of forum should not, or should rarely, be disturbed.” *E. & J. Gallo Winery v. F. & P.
 5 S.p.A.*, 899 F. Supp. 465, 466 (E.D. Cal. 1994).

6 1. *Unwired Planet has Significant Ties to this Forum*

7 Google claims Unwired Planet’s ties to Nevada should be disregarded, going so far as to
 8 suggest that Unwired Planet has “significant ties to the Northern District of California, and no
 9 meaningful ties to Nevada.” Doc. # 33 at 7. Contrary to Google’s allegations, Unwired Planet
 10 has a significant connection with Reno but no longer has any meaningful connection to Northern
 11 California. Robbins Decl. ¶ 23.

12 Unwired Planet’s entire business is in Reno, and it moved here for significant business
 13 reasons: no corporate income tax, no personal income tax, low cost of living, and business
 14 friendly laws and regulations. Robbins Decl. ¶¶ 11-16. The Nevada Commission on Economic
 15 Development listed Nevada as the second “most friendly” state for entrepreneurial companies
 16 and listed California as the forty-ninth. Yowell Decl. ¶ 16, Ex. 67 at slide entitled ‘Entrepreneur
 17 Friendly States.’ This ranking (and others like it) motivated Unwired Planet’s decision to move
 18 to Reno and sever its ties with Northern California. Robbins Decl. ¶ 10.

19 Unwired Planet’s only office is in Reno, and it is staffed with long-term, full-time
 20 employees hired locally. Robbins Decl. ¶ 20; Vetter Decl. ¶ 4. By the time a hearing is held on
 21 this Motion, Unwired Planet expects that every single employee will be working out of its South
 22 Virginia Street Reno headquarters. Robbins Decl. ¶ 10. The fact that Unwired Planet is still
 23 continuing to transition its business to Reno actually shows that Unwired Planet did not hastily
 24 make the move to Reno for the sole purpose of justifying venue in the present dispute but rather
 25 that Unwired Planet took a slow and deliberate course of action meant to permanently transition
 26 itself to the Reno business community.

27 In its Motion, Google cites many non-controlling Texas venue decisions. These
 28 decisions, which were decided under Fifth Circuit law, apply a wholly different legal standard

than is applied by the Ninth Circuit. For instance, courts applying Fifth Circuit law accord no independent weight to the plaintiff's choice of forum. *See e.g., In re TS Tech United States Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) ("Fifth Circuit precedent clearly forbids treating the plaintiff's choice of venue as a distinct factor in the § 1404(a) analysis."). The same analysis is not true under Ninth Circuit Law. *Meyer Mfg. Co. v. Telebrands Corp.*, 2012 WL 1189765 at *4-5 (E.D. Cal. 2012) ("The court determines that, because of Plaintiff's contacts to [this district] related to [Plaintiff's] cause of action, Plaintiff's choice of forum will be given deference in analyzing the motion to transfer."); *Warfield v. Gardner*, 346 F. Supp. 2d 1033, 1044 (D. Ariz. 2004) (plaintiff's choice of "home forum is to be given substantial deference"); *Ravelo Monegro v. Rosa*, 211 F.3d 509, 513 (9th Cir. 2000) (referring to the "strong presumption in favor of a domestic plaintiff's forum choice."). In addition, many of the cases cited by Google involve a plaintiff that opened up a shell, non-functioning office (termed "ephemeral" or "sham" offices by those courts) in the Eastern District of Texas. *See e.g.*, Doc. # 33 at 7-8 citing *In re Microsoft*, 630 F.3d 1361, 1365 (Fed. Cir. 2010). This is certainly not the case with Unwired Planet, the legitimacy of whose business connections to Reno cannot be questioned.²

In one inapplicable case cited by Google, *In re Microsoft*, the Court found transfer warranted because the plaintiff's offices in its chosen forum "staffed no employees, were recent, ephemeral, and a construct for litigation and appeared to exist for no other purpose than to manipulate venue." *In re Microsoft*, 630 F.3d at 1365. The situation here could not be more different. Unwired Planet's Reno offices are filled with real employees that perform its core business operations. Vetter Decl. ¶¶ 4-7. For instance, Unwired Planet closed the Ericsson partnership after moving to Reno. Robbins Decl. ¶ 13. Further, Unwired Planet's Reno office is not a construct for litigation nor is it an attempt to manipulate venue. To the contrary, Unwired Planet did not make the decision to file the present lawsuit in this Court until after it made the

² See, e.g., *In re Microsoft Corp.*, 630 F.3d 1361, 1365 (Fed. Cir. 2011) (disregarding plaintiff's empty offices); *In re Verizon Bus. Network Services Inc.*, 635 F.3d 559, 562 (Fed. Cir. 2011) (same); *In re Apple Inc.*, 374 F. Appx. 997, 999 (Fed. Cir. 2010); *In re Zimmer Holdings, Inc.*, 609 F.3d 1378 (Fed. Cir. 2010) (same); *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1337 (Fed. Cir. 2009) (similar).

1 decision to move its operations to Reno to take advantage of the pro-business climate that exists
 2 here.³ Robbins Decl. ¶ 19.

3 Google suggests that Unwired Planet filed the present suit too soon after moving to Reno
 4 (Doc. # 33 at 7-8), but there is no waiting period that must lapse before a patentee may file a
 5 lawsuit in the Courts of its chosen forum. Merely counting the number of days between the
 6 formation of Unwired Planet LLC in Nevada and the filing of this complaint does not make non-
 7 controlling Texas venue cases cited by Google relevant to this analysis. Doc. # 33 at 7-8 *citing*
 8 *In re Microsoft Corp.*, 630 F.3d at 1365. Unlike the *In re Microsoft* plaintiff who created a
 9 Texas LLC to hold its patents, Unwired Planet has actually moved its parent company, Unwired
 10 Planet, Inc., to Reno, on a permanent basis. Unwired Planet, Inc. is a publicly traded company,
 11 and the facts of its move are a matter of public record.⁴ All files, all employees, all equipment,
 12 and all facilities are either in Reno now or will be shortly. Robbins Decl. ¶¶ 17, 23.

13 While Unwired Planet might not yet have near Google's number of employees, it is a
 14 Reno company employing local people and seeking resolution of its disputes in a local forum.
 15 This factor weighs against transfer. *Duramed Pharms., Inc. v. Watson Labs., Inc.*, 2008 WL
 16 5232908 at *3 (D. Nev. 2008) (ties to forum factor weighs against transfer when a party was
 17 domiciled in Nevada).

18 2. *Sources of proof are located in Nevada as well as California*

19 Google argues that most of the relevant sources of proof are located in the Northern
 20 District of California and that it is unlikely that any relevant evidence will be found in Nevada.
 21 Doc. # 33 at 8-9. This is untrue. Unwired Planet has extensive physical files that Local Patent

22 ³ It is notable that those same Texas Courts, relied on so heavily in Google's motion, are
 23 reluctant to transfer cases when the plaintiff's location is not a sham even if the plaintiff moved
 24 to the forum close in time with the filing of the lawsuit at issue. *See e.g., Eolas Techs., Inc. v.*
25 Adobe Sys., Inc. et al., 2010 WL 3835762 at *4 (E.D. Tex. Sept. 28, 2010) ("While Eolas's
 26 relocation is recent, it is not ephemeral. . . . The Court will not create a time-based litmus test for
 27 how long a plaintiff must reside in this District before bringing suit here."). The Federal Circuit
 28 also refused to grant a writ of mandamus on this same denial of transfer order. *In re Google Inc.*,
 412 Fed. Appx. 295 (Fed. Cir. 2011).

29 ⁴ Google cites to a single SEC filing mistakenly showing Unwired Planet Inc., headquarters
 30 being located in Redwood City. Motion at 4; Arroyo Decl. ¶ 15, Ex. 12. Conspicuously, Google
 31 ignores the many other SEC filings showing Unwired Planet Inc.'s relocation to its Reno
 32 headquarters. Robbins Decl. ¶ 22, Ex. 55.

1 Rule 16.1-7 requires Unwired Planet to produce related to the conception, reduction to practice,
 2 and prosecution of the patents in suit, including inventors' notebooks and prosecution file
 3 jackets. Robbins Decl. ¶ 17. All told, it is on the order of millions of pages. *Id.* All of these
 4 documents are in Reno, Nevada. Robbins Decl. ¶ 23. While Google again relies on Texas venue
 5 cases applying Fifth Circuit law (Doc. # 33 at 9), the actions of Unwired Planet are readily
 6 distinguishable. All of Unwired Planet's files, including prosecution documents relating to
 7 several hundred patents and patent applications, contracts, and financial records, are at its
 8 Nevada headquarters, not just those relevant to the patents-in-suit. Robbins Decl. ¶¶ 17, 23.
 9 These files were moved simply because Unwired Planet moved its headquarters to Reno, not as a
 10 trick to establish venue in this case.

11 The accused products in this case are Google software programs and Google devices that
 12 run Google software. Doc. # 1 at 7-8. As one of the foremost proponents of cloud storage
 13 Google cannot credibly suggest that it has scores of boxes of paper documents that will be
 14 necessary evidence in this case. Yowell Decl. ¶ 5, Ex. 56 at 6-7. Considering the high tech
 15 nature of its business, Google's relevant documentation likely will be stored electronically. The
 16 question of where Google's documents are "kept," then, becomes a non-issue. *Brackett v. Hilton*
 17 *Hotels Corp.*, 2008 WL 2632675 at *7 (N.D. Cal. 2008) (according little weight to this factor
 18 "[g]iven technological advances in document storage and retrieval"); *Kannar v. Alticor, Inc.*,
 19 2009 WL 975426 at *6 (N.D. Cal. 2009) (stating same). To the extent Google attempts to argue
 20 that the location of its servers or datacenters are important, those facilities are present throughout
 21 the world. Yowell Decl. ¶ 17, Ex. 68. One location stands out, however; Google's information
 22 shows that the entire state of California does not have a single Google data center. *Id.*

23 Google identifies patent prosecution counsel and the inventors of the patents-in-suit as
 24 third parties who may have relevant documents. Google suggests that some of these documents
 25 may be located in Northern California, but Google has not carried its burden of demonstrating
 26 "the extent of necessary evidence, whether the evidence is composed of hard copies which would
 27 need to be reproduced and moved, or whether the evidence is electronic in form and could be
 28 reproduced in physical form at any location." *Flint v. UGS Corp.*, 2007 WL 4365481 at *4

1 (N.D. Cal. 2007). Regardless, Unwired Planet has identified the patent prosecution files and
 2 inventor documents within its extensive physical files which would be produced, and these are
 3 located at its Reno headquarters.

4 The only relevant physical evidence identified in this case is Unwired Planet's paper files
 5 in its Reno headquarters. Google has not identified any relevant physical evidence that is present
 6 only in California.⁵ The production of electronically stored information will be the same, and
 7 cost the same, whether this case is in Nevada or California. However, this logic applies equally
 8 to Unwired Planet's own electronic documents, and so this factor weighs only slightly against
 9 transfer. *Multimedia Patent Trust v. Tandberg, Inc.*, 2009 WL 3805302 at *5 (S.D. Cal. 2009).

10 3. *Google has failed to identify any witness for which compulsory process
 11 would likely be required*

12 Google may not simply point to individuals that have varying degrees of importance and
 13 proclaim the availability of compulsory process as a critical factor. Doc. # 33 at 10-11. In fact,
 14 Google has identified only three categories of potential third-party witnesses: inventors,
 15 Openwave Mobility and Openwave Messaging employees, and patent prosecution counsel. *Id.*
 16 Google's showing falls short in two key areas.

17 First, Google has failed to show that any of these witnesses will likely testify at trial.
 18 *Deirmenjian v. Deutsche Bank, A.G.*, 2006 WL 4749756 (C.D. Cal. 2006) ("In considering the
 19 location and availability of evidence and witnesses, "[t]he crucial focus is not on 'the number of
 20 witnesses or quantity of evidence in each locale,' but rather 'the materiality and importance of
 21 the anticipated [evidence and] witnesses' testimony....'" Once this is assessed, the court must
 22 "determine[] their accessibility and convenience to the forum."") quoting *Tuazon v. R.J.*

23 ⁵ Even if Google were able to identify evidence that is only located in California because of the
 24 proximity of the Northern District of California to the District of Nevada, Google's claims of
 25 inconvenience ring hollow. *Leesona Corp. v. Duplan Corp.*, 317 F. Supp. 290, 300 (D.R.I.
 26 1970) ("I find that the additional two hundred miles which defendants' witnesses will have to
 27 travel, if trial of this case remains in Rhode Island, is insignificant in terms of additional expense,
 28 cost, or time, and therefore lends no support to the motion to transfer."). See also *Lee v. Ohio
 Casualty Ins. Co.*, 445 F. Supp. 189, 192 (D. Del. 1978) ("In light of the relatively short distance
 between Wilmington and Baltimore (approximately sixty miles), it is unlikely that any of the
 parties or witnesses, most of whom are located in Maryland, would be unduly burdened by the
 need to travel the additional distance to Wilmington.").

1 *Reynolds Tobacco Co.*, 433 F.3d 1163, 1181 (9th Cir. 2006) (internal citations omitted). Google
 2 states that an inventor’s testimony is “relevant” (Doc. # 33 at 10-11), but that is insufficient.
 3 There are ten patents-in-suit with a total of twenty inventors. Much of the testimony of these
 4 inventors will likely be of limited, if any, materiality and significance and many of their
 5 testimony may be cumulative to that of others inventors on the same patent. In the trial of a case
 6 this large and complex, the parties and the Court must focus only on key evidence that goes to
 7 critical points. Google has not identified any individual inventors it intends to actually call at
 8 trial. Doc. # 33 at 10-11.

9 Compounding this omission, Google has failed to recognize that the seven inventors it
 10 contends would be subject to compulsory process in Northern California contributed to only four
 11 of the ten patents-in-suit.⁶ Doc. # 33 at 10; # 33-2 at 5; Yowell Decl. at ¶ 3. Thus, whether the
 12 case proceeds to trial in this Court or in the Northern District of California, inventors of a
 13 substantial majority of the patents-in-suit will not be subject to compulsory process. Given the
 14 relative proximity of Reno and San Francisco, there is no reason to believe – and Google
 15 suggests none – that the inventors would be more likely to attend a trial in San Francisco than a
 16 trial in Reno.

17 Similarly, it does not appear that any patent prosecution counsel would be a necessary
 18 witness at trial. Patent prosecution counsel are rarely called as witnesses at trial and then only in
 19 bench trials that adjudicate allegations of inequitable conduct. *See, e.g., Paragon Podiatry Lab., Inc. v. KLM Labs., Inc.*, 984 F.2d 1182, 1193 (Fed. Cir. 1993) (discussing the deposition
 20 testimony of a prosecuting patent attorney in connection with an inequitable conduct claim).
 21 Google has not alleged inequitable conduct. *See* Doc. # 28.

22 There is likewise no specific allegation of importance of the current Openwave
 23 employees. Also, approximately two-thirds of those employees don’t even live in the United
 24 States, and many of those that do live in the United States are outside of California. Robbins
 25 Decl. ¶ 5. Importantly, none of the employees of the Location product business sold to PLS live
 26
 27

28 ⁶ Mr. Cormia is not included, as his location could not be shown with certainty.

1 in California. *Id.* This is significant because the Location product business would include the
 2 legacy Openwave products potentially relevant to five out of the ten patents-in-suit.⁷ Google
 3 provides no basis for the Court to conclude that they will be necessary witnesses at trial.

4 Second, Google has failed to even allege that any of these witnesses would not willingly
 5 testify. The availability of compulsory process is irrelevant without an unwilling witness, and
 6 Google has not identified a single witness for which compulsory process appears necessary.

7 *Grubs v. Consol. Freightways, Inc.*, 189 F. Supp. 404, 410 (D. Mont. 1960) (discounting
 8 compulsory process factor where movant did not show any witnesses were unwilling to testify).

9 See also *Kawamura v. Boyd Gaming Corp.*, 2012 WL 6047728 (D. Haw. 2012); *Houk v.*
 10 *Kimberly-Clark Corp.*, 613 F. Supp. 923, 931 (W.D. Mo. 1985) (discounting compulsory process
 11 argument where defendant “merely assumes that the witnesses in question would not appear
 12 voluntarily at a trial”). This is especially important where, as here, identified witnesses are
 13 former employees, as it is reasonable to assume that they would testify willingly. *Critikon, Inc.*
 14 v. *Becton Dickinson Vascular Access, Inc.*, 821 F. Supp. 962, 967 (D. Del. 1993).

15 Most, if not all, of the witnesses identified will be deposed or interviewed at locations
 16 convenient to them, the occurrence and cost of which is not affected by this case being in Nevada
 17 instead of California. Of those, likely only a small subset, if any, will be selected by each party
 18 to be called at trial. Google has not provided this Court with any evidence, or even an allegation,
 19 that shows compulsory process in California will be necessary for any individual witness that
 20 either side intends to actually call at trial. This factor is therefore neutral to transfer. *Duramed*
 21 *Pharms.*, 2008 WL 5232908 at *3 (compulsory process factor was neutral when movant did not
 22 identify any witnesses who were unwilling to testify absent a court order); *Grubs*, 189 F. Supp.
 23 at 410 (compulsory process factor did not weigh in favor of transfer where movant failed to show
 24 importance of identified witnesses’ testimony or that they were likely to be unwilling witnesses).

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28 ⁷ The ‘016, ‘087, ‘205, ‘647, and ‘752 patents.

1 4. *Litigation would be less expensive in Nevada than California*

2 As noted above, Google fails to consider the materiality and importance of the witnesses
 3 it claims will be inconvenienced.⁸ *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 35-36 (9th Cir.
 4 1984). Without even identifying who it expects to testify at trial, Google cannot show that trial
 5 in Nevada will be more expensive or inconvenient than one in California.

6 Further, Google has not shown that California is clearly more convenient for the third-
 7 party witnesses it identifies, even assuming the unlikely event that they all testify at trial. While
 8 Google provides a chart listing the distance from each of the inventors to the Reno Courthouse
 9 (Doc. # 33-2 ¶ 20), it neglected to do the same for the San Francisco Courthouse. Unwired
 10 Planet has corrected Google's omission, and the comparison is revealing. Yowell Decl. ¶ 18, Ex.
 11 69. When considering only the eleven U.S.-based inventors⁹ California is only marginally more
 12 convenient, with average distances from the inventors' residences being 393 miles to Reno
 13 versus 344 miles to San Francisco. *Id.* When the eight foreign-based inventors are considered,
 14 every one of which is located closer to Reno than San Francisco, it is increasingly apparent that
 15 Google has failed to show that California is clearly the more convenient forum.

16 What is known is that each party will have several of its employees testify at trial. For
 17 example, Unwired Planet will have at least Mr. Robbins, Mr. Mendez, Mr. Mulica, and Mr.
 18 Vetter testify at trial. Yowell Decl. ¶ 4. While Google complains about the costs of having its
 19 employees testify in Nevada, it ignores the fact that these costs will be shifted onto Unwired
 20 Planet if this litigation is transferred to California. Doc. # 33 at 12. This is inconvenience
 21 shifting, and is an inappropriate basis for transfer. *In re Ferrero Litig.*, 768 F. Supp. 2d 1074,
 22 1081 (S.D. Cal. 2011) ("In deciding whether to transfer, the Court must be careful to avoid a

23 ⁸ It is important to note that the Ninth Circuit considers this issue, while the Fifth Circuit does
 24 not. *Compare Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1146 (9th Cir. 2001) (district court
 25 should consider degree of materiality and importance of prospective testimony, and not simply
 26 the number of witnesses) with *In re Genentech, Inc.*, 566 F.3d 1338, 1344 (Fed. Cir. 2009)
 27 (finding district court did not need to consider importance of identified witnesses' testimony
 28 under Fifth Circuit law).

9 The twelfth U.S.-based inventor, Mr. Neil Cormia, could not be reliably located. Doc. # 33-2 at
 ¶ 34. It appears Mr. Cormia lives either in Oregon or California. Distances to both locations
 have been included on Unwired Planet's chart, but he has been excluded from the total and
 average calculations due to the uncertainty.

1 transfer that “would merely shift rather than eliminate” the inconvenience of costs. . . . In this
 2 case, transfer would decrease Defendant’s litigation costs, but it might increase Plaintiffs’ costs to
 3 the same extent.”) (internal citations omitted); *Decker Coal*, 805 F.2d at 843 (finding that
 4 conveniences were “shifted” rather than “eliminated” when pertinent witnesses resided in both
 5 the transferee and transferor districts).

6 The respective costs of travel in Nevada and California are in stark contrast to each other.
 7 While the actual transportation (by plane, car, or train) is identical in either direction, it comes as
 8 no surprise that food, services, and lodging costs are all dramatically lower in Nevada. Google
 9 could likely have two or three witnesses testify in Reno, Nevada for the same amount it would
 10 cost Unwired Planet to have a single witness testify in a Bay Area District Court. *Id.* Moreover,
 11 Google’s \$50 billion per-year in revenues makes it much better positioned to absorb these travel
 12 costs. *Kannar*, 2009 WL 975426 at *5 (N.D. Cal. 2009) (the court should consider the parties’
 13 relative abilities to absorb litigation costs in analyzing transfer); *Healthtrac Corp. v. Caterpillar,*
 14 *Inc.*, 2005 WL 2811765 at *4 (N.D. Cal. 2005) (stating same); *Royal Queentex Enters. v. Sara*
 15 *Lee Corp.*, 2000 WL 246599 at *6 (N.D. Cal. 2000) (stating same).

16 Keeping this case in Nevada will result in at most minimal inconvenience to third-party
 17 witnesses, will result in less overall costs, and those costs will be placed on the entity that is most
 18 easily able to bear them. This factor weighs against transfer.

19 5. *Unwired Planet’s choice to file in its home forum is entitled to substantial*
 20 *deference*

21 Unwired Planet has chosen and established Nevada as its residence and domicile.
 22 Unwired Planet’s decision to bring suit in its home forum is entitled to substantial deference.
 23 *Galli v. Travelhost, Inc.*, 603 F.Supp. 1260, 1262 (D. Nev. 1985) (“[T]he citizen plaintiff’s
 24 choice of a proper forum is entitled to ‘paramount consideration.’”); *Clopay Corp. v. Newell*
 25 *Companies, Inc.*, 527 F. Supp. 733, 736 (D. Del. 1981) (“The preference in favor of plaintiffs’
 26 choice of forum is not adopted blindly or without reason. Courts expect that plaintiffs’ choices
 27 will generally reflect their rational and legitimate concerns, including convenience to themselves

28

1 and their witnesses.”); *Warfield*, 346 F. Supp. 2d at 1044 (“Plaintiff’s choice of his home forum
 2 is to be given ‘substantial deference.’”) (internal citation omitted).

3 While this Court also considers where the “center of gravity” of the accused activity
 4 occurs, that inquiry does not displace or eliminate the deference given to plaintiff’s proper choice
 5 of forum. *Duramed*, 2008 WL 5232908 at *3 (“[Plaintiff] chose to file this case in Nevada.
 6 While this fact does not carry the same weight it would be afforded if the operative facts arose
 7 here, it is still entitled to substantial consideration.”) Like the defendant in *Duramed*, whose
 8 motion to transfer this Court denied, Google has offered only a naked allegation that the
 9 research, development, marketing, sales, finance, and pricing of the many accused products were
 10 “led” by personnel in California. Doc. # 33 at 13; Doc. # 33-1 ¶¶ 6, 8. There has been no
 11 identification of key personnel on these teams by Google; no explanation of what level of
 12 involvement these individuals who “led” these teams had with the accused products; and not
 13 even an allegation that the roughly two-thirds of Google personnel that do not work in Mountain
 14 View were not substantively involved with the accused products. *See* Doc. # 33-1 ¶¶ 5-9.

15 This case does not present the “limited sales activity” that was the only connection to the
 16 forum in *Osteopath, Inc. v. GenSci Regeneration Scis., Inc.*, 6 F. Supp. 2d 349, 357-58 (D.N.J.
 17 1998), cited by Google. Doc. # 33 at 13. As discussed above, Google conducts testing and
 18 marketing throughout the country. This includes Nevada, where Google has extensively tested
 19 its driverless cars with the accused Google Maps products as well as numerous smartphones that
 20 use the accused Android operating system. These products were announced and marketed to the
 21 public right here in Nevada. Moreover, there are a large number of people in Reno that use
 22 Google’s accused products on a daily basis. With a global presence as broad and pervasive as
 23 Google’s and a local employer as a plaintiff, it can hardly be claimed that California has any
 24 more of a local interest in this action than Nevada does.

25 Nevada has at least as much of a local interest in this case as California, and Unwired
 26 Planet’s choice of its home forum is entitled to substantial deference. This factor weighs
 27 strongly against transfer.

28

1 6. *The public interest factors weigh against transfer*

2 Google treats this factor as an opportunity to repeat its previous arguments. Doc. # 33 at
 3 14-15. But in fact, as we have shown, Unwired Planet has very little that ties it to California
 4 beyond the history of its predecessor, and Google has more ties to Nevada than it admits. While
 5 Google tries to frame this case as one Silicon Valley company suing another, in reality this is a
 6 Reno company suing a global company. Google and Unwired Planet may both have started their
 7 lives in Silicon Valley, but that was then. Today, Unwired Planet is in Reno and Google is
 8 everywhere in the world with “more than 70 offices in more than 40 countries around the globe.”
 9 Yowell Decl. ¶ 6, Ex. 57. For example, Google recently announced its \$1 billion investment in a
 10 new London headquarters. Yowell Decl. ¶ 19, Ex. 70.

11 There is also reason to believe that keeping this case in Nevada will result in judicial
 12 economy. Nevada is a participant in the Patent Pilot Program, which gives the option to this
 13 Court to transfer this case to one of the designated judges. Should this Court choose to transfer
 14 this case, it will most likely be assigned to the only designated judge in Reno, Chief Judge Jones.
 15 Judge Jones is currently presiding over Unwired Planet’s case against Apple on different, but
 16 highly related patents, with very similar infringing technology. *See Case No. 3:12-cv-00505-*
 17 RCJ-VPC, Doc. # 1. Should these two cases end up before the same judge, the technological
 18 understanding and familiarity gained from one case will result in substantial judicial economy in
 19 the other. *Continental Grain Co. v. The FBL*-585, 364 U.S. 19, 26 (1960) (“To permit a situation
 20 in which two cases involving precisely the same issues are similarly pending in different District
 21 Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to
 22 prevent.”).

23 Google’s use of docket congestion statistics is misleading. Doc. # 33 at 15-16. While
 24 California might have slightly faster disposition times generally across all civil cases, this is not a
 25 general civil case. This is a patent case, and it is Nevada that is faster at resolving patent cases
 26 than California. Mark A. Lemley, *Where to File Your Patent Case*, 38 AIPLA Q.J. 401, 413-15
 27 (2010) (Nevada time to resolution in patent cases: 1.09 years; California time to resolution in
 28

1 patent cases: 1.28 years). *See also id.* at 416-18 (Nevada time to trial in patent cases: 2.39 years;
2 California time to trial in patent cases: 2.92 years).

3 Nevada has an able jury pool, a local interest in this litigation, and a judiciary that
4 resolves patent cases faster than in California. This factor weighs against transfer.

5 7. *Other factors*

6 Unwired Planet agrees that the other enunciated factors are not relevant in this case and
7 are therefore neutral.

8 **IV. CONCLUSION**

9 Unwired Planet has filed this action in its home forum of Reno, Nevada. The majority of
10 the factors are neutral or weigh against transfer (and some strongly against transfer). Google has
11 failed to demonstrate that the Northern District of California is a more convenient forum, and
12 instead seeks only to improperly shift the inconvenience from itself to Unwired Planet. Google's
13 Motion should be denied.

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1 Dated: February 4, 2013.

Respectfully submitted,

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21 **ATTORNEYS FOR PLAINTIFF**
22 **UNWIRED PLANET LLC**

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this date a true and correct copy of the foregoing document, **UNWIRED PLANET'S OPPOSITION TO GOOGLE'S MOTION TO TRANSFER**, as well as the accompanying declarations and exhibits, will be served upon counsel of record via electronic mail through the United States District Court's CM/ECF system.

Dated: February 4, 2013

/s/ Merrilyn Marsh

An Employee of Watson Rounds